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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ANGELA CAMERON et al., Plaintiffs and Respondents, v. US BANK HOME MORTGAGE et al., Defendants and Respondents.	B209213 (Los Angeles County Super. Ct. No. BC318034)

APPEAL from judgments of the Superior Court of Los Angeles County. Susan Bryant-Deason, Judge. Affirmed in part and reversed in part.

Angela Cameron and Winnie Doeman, in pro. per., for Plaintiffs and Appellants.

McCarthy & Holthus, Matthew E. Podmenik and James M. Hester for Defendant and Respondent US Bank Home Mortgage.

Katten Muchin Rosenman, Stuart M. Richter, Gregory Korman and Evan Dwin for Defendant and Respondent Beneficial California, Inc.

A. Lysa Simon for Defendant and Respondent Water and Power Community Credit Union.

Paul N. Gautreau for Defendant and Respondent Gloria J. Wilson etc.

SUMMARY

This is the fourth appeal in long-running litigation between Angela Cameron and Winnie Doeman (collectively, Cameron or appellants) and the foreclosing lender, U.S. Bank Home Mortgage (the Bank) over nonjudicial foreclosure proceedings that culminated in the sale of Cameron's home. Cameron appeals from a grant of summary judgment to the Bank on her claims for declaratory relief, to set aside the foreclosure sale, and for breach of contract, and challenges the trial court's ruling on a discovery motion. She also appeals from a judgment entered on a cross-complaint in interpleader filed by the trustee under the deed of trust with respect to excess funds generated by the foreclosure sale, and she challenges the attorney fees awarded to the trustee in the interpleader action.

We reverse the grant of summary judgment to the Bank, but find no abuse of discretion in the trial court's discovery rulings. We affirm the judgment on the cross-complaint in interpleader.

FACTUAL AND PROCEDURAL BACKGROUND

The appellants borrowed money from the Bank in 1990; the loan was secured by a deed of trust on their home. After the Bank and Quality Loan Service Corp. (Quality) commenced nonjudicial foreclosure proceedings by a notice of default and election to sell dated March 11, 2004, appellants filed the current suit.

1. Prior proceedings and appeals.

To understand the issues presented in this appeal, it is necessary to describe some of the earlier proceedings in the case. The sequence of events leading to the foreclosure sale of appellants' home are as follows:

- The Bank initiated nonjudicial foreclosure proceedings in January 1998, and appellants sued to enjoin the sale and for breach of contract and other claims. In their first appeal, from a January 2002 judgment, appellants successfully stopped the nonjudicial foreclosure sale. In an unpublished opinion, we held that the notice of default issued by the Bank was invalid

because it failed to specify a tax default, and no other correct breach supported the amount of the deficiency identified in the notice of default. We rejected appellants' other claims, as there was substantial evidence that appellants had failed to pay property taxes advanced by the Bank. We held the Bank must record another notice of default and election to sell and comply in all respects with Civil Code section 2924, including affording appellants three months to cure the default. (See *Cameron v. Firstar Bank* (June 30, 2003, B156022 [nonpub. opn.] (*Cameron I*).)

- In December, 2003, the Bank wrote to the appellants, warning them that the Bank had advanced tax payments (for payments from March 20, 2002, through November 17, 2003) in the total amount of $2,446.68, and that the appellants should reimburse the Bank "forthwith." In addition, the Bank stated that $67,830 in attorney fees awarded by the trial court (which the Bank had incurred in connection with the proceedings leading to our decision in *Cameron I*) was due and should be paid "forthwith."
- On February 9, 2004, the Bank wrote to the appellants, listing the following amounts as due: $3,113.04 in escrow shortage (presumably for tax payments), $119 for property inspections, $72,113.22 for the attorney fees and costs in connection with *Cameron I*, and $13,120.64 in interest on the attorney fees, for a total of $89,742.84. The Bank stated it would accelerate the appellants' note unless full payment occurred within 30 days.
- On March 11, 2004, the Bank recorded a second notice of default. This notice of default demanded payment of $90,705.48 as of March 11, 2004, an amount which included the attorney fees the Bank had incurred in connection with *Cameron I*. The notice of default and election to sell described the appellants' default in payment as follows:

"Failure to make the 2/1/04 payment of principal and interest and all subsequent payments, together with late charges, impounds,

taxes advances and assessments. In addition, escrow advances and attorneys fees pursuant to the court order of April 16, 2002, as well as legal interest."

- On the same day, March 11, 2004, the Bank returned appellants' mortgage payment, stating that "[w]e are returning the check because you have failed to reinstate the loan in full pursuant to our letter dated February 9, 2004," and that the attorney fees and costs "must be paid at this time to bring the loan current." A month later, on April 13, 2004, the Bank returned another mortgage payment for the same reason.
- On June 21, 2004, the Bank returned two more mortgage payments, "based upon your continuing default and failure to pay the attorney's fees as awarded by the superior court. As I have previously stated, U.S. Bank fka Firstar Bank is proceeding with foreclosure based upon your failure to pay attorney's fees awarded."
- On July 6, 2004, the appellants filed their second lawsuit, seeking declaratory relief, injunctive relief to restrain the foreclosure, and damages for breach of contract. They alleged that all the defaults asserted in the notice of default were waived or excusable because they had made the mortgage payments, and the escrow shortages stated in the Bank's letters were confusing and incorrect. As for the attorney fees, the complaint alleged (correctly) that the Court of Appeal in *Cameron I* had expressly stated that it had not considered the attorney fees awarded to the Bank, because the issue had not been raised and "[u]pon remand the trial court may consider the award in light of our disposition." However, no one had sought to clarify or amend the trial court's attorney fee order. The appellants specifically alleged (among other things) that the Bank filed a notice of default containing an invalid demand for attorney fees.

- On July 20, 2004, the trial court (Honorable David Yaffe in Department 86) denied the appellants' ex parte application for an injunction restraining the foreclosure. No transcript of that hearing exists.
- After several postponements because of bankruptcy proceedings, the foreclosure sale occurred on August 27, 2004, and the property was sold to a third party purchaser.

Two weeks after the foreclosure sale, the appellants moved to vacate the April 16, 2002, order awarding the Bank attorney fees in connection with the proceedings leading to *Cameron I*. The trial court declined to do so, leading to the appellants' second appeal. This court reversed the trial court's order, directing the court to hold a hearing "to determine whether, in light of *Cameron I*, [the Bank] was entitled to the attorneys' fees it included in the March 11, 2004 Notice of Default." (*Cameron v. Firstar Bank* (February 15, 2006, B178813 [nonpub. opn.] (*Cameron II*).)

The trial court held a hearing as directed and again found the Bank was entitled to the attorney fees and costs under a provision in the deed of trust. This precipitated the appellants' third appeal. We reversed the trial court's attorney fee orders and directed the court to enter a new order denying the Bank attorney fees and costs.[1] (*Cameron v. U.S. Bank* (May 10, 2007, B192925 [nonpub. opn.] (*Cameron III*).)

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[1] We found it was an abuse of discretion to award fees to the Bank when Cameron had succeeded in halting the foreclosure and, even though the Bank prevailed on Cameron's breach of contract claim, it was not entitled to fees solely for that cause of action. There was no contractual provision requiring the court to award fees to the "prevailing party." (*Cameron III, supra,* at pp. 6-7.)

2. This litigation

During the years following the foreclosure sale and while *Cameron II* and *Cameron III* were litigated, various proceedings occurred leading to the current appeal. First, on September 8, 2004, shortly after the August 2004 foreclosure sale, appellants amended their July 6, 2004 complaint ("amended complaint"). The amended complaint sought declaratory relief, an order setting aside or voiding the sale of their property, and, as before, damages for breach of contract. The Bank eventually sought and obtained the summary judgment that is now at issue. Second, Quality, the trustee under the deed of trust, filed a cross-complaint in interpleader, relating to surplus funds obtained from the foreclosure sale. Appellants never answered the cross-complaint and were defaulted. The court granted Quality's motion to be relieved as stakeholder and awarded Quality attorney fees. A judgment was eventually entered in favor of several claimants to the funds. We describe the events leading to these judgments in turn.

Events Leading to the Bank's Summary Judgment

After this court's May 2007 decision in *Cameron III*, holding the Bank was not entitled to the attorney fees that had been the principal basis for the foreclosure proceedings, litigation resumed on the appellants' amended complaint. The following events occurred:

- On November 6, 2007, the Bank served the appellants with form and special interrogatories and requests for production. The appellants did not respond.
- On January 8, 2008, the Bank served appellants with requests for admissions. The requests for admissions contained nine items. Many of them relating to appellants' failure to pay property taxes. One asked appellants to "[a]dmit that you have suffered no damages."
- On January 14, 2008, the Bank filed its motion for summary judgment, or in the alternative summary adjudication.

- On February 1, 2008, appellants wrote to the Bank declining to respond to the interrogatories. They claimed a response would be "premature" because they were preparing a second amended complaint raising issues the interrogatories would not address. They said they expected to file the amended complaint within the next 15 or 20 days, and "will be happy to then respond to any appropriate request for discovery."
- On March 4, 2008, the Bank filed a motion to compel discovery responses, for sanctions, and to deem admitted matters set out in the Bank's January 8, 2008 requests for admissions. The Bank filed a second motion to that effect a week later, setting the hearing for March 28, 2008. However, appellants failed to file an opposing separate statement of disputed facts, and on March 27, 2008, the court continued the hearing in order to permit the appellants to do that.
- The following day, March 28, 2008, the court granted the Bank's discovery motion. Appellants were ordered to answer without objection the Bank's special interrogatories, form interrogatories, and requests for production of documents. The court imposed a monetary sanction of $1,375 on the appellants. Finally, the court deemed as admitted against the appellants the requests for admissions served on them.
- On April 7, 2008, the appellants filed a separate statement of undisputed facts in opposition to the Bank's motion for summary judgment or in the alternative summary adjudication.
- The court granted summary judgment following a hearing on April 11, 2008, and on May 16, 2008, judgment was entered thereon.

Events Leading to the Judgment on Quality's Interpleader Action

After the proceeds received at the August 27, 2004 foreclosure sale were disbursed (payments to the foreclosing Bank, plus trustee costs and attorney fees), $116,555.95 remained as surplus funds. Almost one year after the sale, on August 23, 2005, Quality

filed an ex-parte application for an order to permit the filing of a complaint in interpleader. The trial court granted Quality's application, and the complaint in interpleader was filed on August 25, 2005. The appellants never answered. Finally, eight months after they had been served with a copy of the interpleader complaint, the appellants were defaulted. Even though the court reminded them that their default had been entered, the appellants never moved to set it aside.

Quality's complaint in interpleader identified three claims to the surplus funds. These were (1) a second deed of trust in favor of Transamerica Financial Services (now Beneficial California, Inc.), (2) an abstract of judgment in favor of Water and Power Community Credit Union, and (3) a third deed of trust in favor of Robert Wilson (now the Estate of Robert Wilson). Each of these three claimants answered the interpleader complaint, claiming respectively $27,698.67 plus interest; $17,228.67 (as of the date of the answer), and $5,973.39 (plus interest at the legal rate from July 22, 2002 and reasonable attorney fees). As stated above, the appellants did not answer.

Quality filed a motion to be relieved as stakeholder which the court denied without prejudice. Quality filed another motion, and this time the court granted it, on April 8, 2008. Quality was directed to deposit an additional $89,205.03 into the court, so the total amount on deposit would be $205,760.98. (The additional deposit of $89,205.03 represented the attorney fees that had been disbursed to the Bank from the proceeds of the August 2004 foreclosure sale, and which this court held in *Cameron III* had been improperly awarded to the Bank.) Quality was granted $14,464.70 in attorney fees, which were not to be disbursed, but were to be taken into consideration when the action itself was fully resolved.

Trial on the complaint in interpleader occurred on April 30, 2008. Appellant Cameron expressed a desire to participate, but the court told her that "You have no standing to speak in this trial because you are in default…" After "objecting to any money" because she claimed she owed nothing to the Department of Water and Power Credit Union, to Beneficial, or to the Estate of Robert Wilson, Ms. Cameron left the

courtroom. The trial proceeded, and judgment was granted against the appellants. The court ordered distribution of various sums from the funds held to the Water and Power Community Credit Union, Quality (for the attorney fees granted previously), the Estate of Robert Wilson, and Beneficial California. On June 5, 2008, the trial court entered judgment on the interpleader complaint.

On June 13, 2008, the appellants filed a timely appeal from the Bank's judgment and from the judgment on the interpleader complaint. After the appeal was filed, the trial court granted appellants' unopposed motion to release the excess interpled funds (which then totaled $116,486.78) to the appellants. (See the May 6, 2009 motion by the Bank and Quality to augment the record on appeal.)

DISCUSSION

The appellants, who represented themselves through most of this litigation, contend that summary judgment was improper, that the Bank's motion to compel responses to discovery and to deem matters admitted should have been denied, that Quality's motion to be relieved as stakeholder and for attorney fees and costs should have been denied, and that the judgment on the interpleader complaint should be reversed.

We agree that the trial court erred in granting summary judgment to the Bank, but find no merit in the appellants' other contentions.

A. The standard of review

We review the Bank's motion for summary judgment or summary adjudication de novo, exercising "an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court …." (*Iverson v. Muroc Unified School Dist.* (1995) 32 Cal.App.4th 218, 222.)

With respect to the Bank's motion to compel responses and to deem matters admitted and for sanctions, we review those orders for an abuse of discretion. (*People ex rel. Lockyer v. Superior Court* (2004) 122 Cal.App.4th 1060, 1071.) Sanction orders are "subject to reversal only for arbitrary, capricious or whimsical action." (*Sauer v. Superior Court* (1987) 195 Cal.App.3d 213, 228; see also *Lang v. Hochman* (2000) 77

Cal.App.4th 1225, 1244 ["[i]n choosing among its various options for imposing a discovery sanction, a trial court exercises discretion, subject to reversal only for manifest abuse exceeding the bounds of reason'"].) "'"Only two facts are absolutely prerequisite to imposition of the sanction: (1) there must be a failure to comply … and (2) the failure must be wilful …."'" (*Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545.)

The orders granting Quality's motion to be relieved as stakeholder and for attorney fees and costs followed entry of the appellants' default, which they never sought to set aside. As a result, our review of their appeal from the judgment is limited. "Where … the defaulting party takes no steps in the trial court to set aside the default judgment, appeal from the default judgment presents for review only the questions of jurisdiction and the sufficiency of the pleadings." (*Corona v. Lundigan* (1984) 158 Cal.App.3d 764, 766-767, citing authorities.) Review also extends to questions involving excessive damages. (*Uva v. Evans* (1978) 83 Cal.App.3d 356, 363-364.) In all other respects, sufficiency of the evidence is not reviewable. (*Corona,* at p. 767.)

The appellants were not represented by counsel. Self-represented litigants are generally held to the same standards as those represented by trained attorneys. "[M]ere self-representation is not a ground for exceptionally lenient treatment. Except when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

B. The trial court erred in entering summary judgment in favor of the Bank.

A defendant moving for summary judgment must show that one or more elements of the plaintiff's cause of action cannot be established. The defendant may do so by presenting evidence that conclusively negates an element of the plaintiff's cause of action, or by presenting evidence that the plaintiff does not possess and cannot reasonably obtain needed evidence. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853, 855.) Once the defendant has presented evidence that plaintiff cannot establish an

element of his or her cause of action, "'the burden shifts to the plaintiff to present evidence showing there is a triable issue of material fact.'" (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 780.)

In this case, as the Bank points out, all three of Cameron's causes of action were founded on her claim that the Bank's notice of default was invalid. One of the bases for her claim was that, as her complaint expressly alleged, the Bank's notice of default contained an invalid demand for attorney fees (a point later confirmed by this court's decision in *Cameron III* finding the attorney fees improper). The Bank was required, therefore, to present evidence that Cameron cannot establish that the notice of default was invalid. We conclude the Bank did not do so, and accordingly the burden never shifted to Cameron to present evidence of a triable issue of fact. This is clear from a review of the Bank's evidence, the trial court's explanation of its ruling, and the law.

1. The Bank's evidence.

The Bank presented evidence that (1) all three of Cameron's causes of action allege that the Bank's notice of default was invalid; (2) the foreclosure sale occurred in August 2004, and the property was sold to a third party purchaser; (3) the foreclosure sale was properly postponed to August 27, 2004; and (4) the notice of default stated one correct default – failure to pay the property taxes – and that default was admitted by Cameron. That is the entirety of the Bank's evidence.

The Bank is correct that the foregoing facts are not subject to dispute. But the Bank is wrong when it concludes that these facts demonstrate that Cameron cannot establish that the notice of default was invalid, which is the foundation of all her causes of action. The Bank, and the trial court, rely on principles stated in two cases decided in the 1930s, to the effect that substantial compliance with the foreclosure statute is sufficient (*Williams v. Koenig* (1934) 219 Cal. 656, 660), and that a notice of default that states one correct default is valid, even though it contains erroneous statements about other defaults. (*Birkhofer v. Krumm* (1938) 27 Cal.App.2d 513, 524 (*Birkhofer*).) As we shall see, these opinions do not govern the circumstances of this case, where the notice of

default contained an erroneous statement that the amount Cameron had to pay, in order to cure her default, was $90,705.48 – more than $85,000 greater than the amount of her actual default.

2. The trial court's ruling.

When it granted the Bank's motion for summary judgment, the trial court ruled, relying on *Birkhofer*, that the March 11, 2004 notice of default had been proper, because it stated that appellants defaulted on payments of taxes, and all that is required for a valid notice of default is that it contain a correct statement of some breach sufficiently substantial to authorize the trustee or beneficiary to declare a default and proceed with a foreclosure. The court also concluded that the appellants' cause of action for declaratory relief was moot and its cause of action to set aside the foreclosure sale presented no justiciable controversy, because the property had been sold to a third party.

3. The law.

The trial court's conclusion that the notice of default was valid depends entirely on the premise that, as stated in *Birkhofer*, so long as a notice of default states at least one correct default, "'the intent of the statute is sufficiently complied with …." But this is too expansive a reading of *Birkhofer*. Before we examine that case, we briefly review the statutory requirements.

The procedure for foreclosing on security by a trustee's sale is prescribed in Civil Code section 2924 and following sections. The statute has been amended many times since its enactment the 1930s. "The statutory requirements must be strictly complied with, and a trustee's sale based on a statutorily deficient notice of default is invalid." (*Miller v. Cote* (1982) 127 Cal.App.3d 888, 894.) The notice of default must contain the statutory form statement that gives notice to the trustor that the default can be cured by payment of the delinquencies described in the notice of default within the reinstatement period. (See Civ. Code, §§ 2924 & 2924c, subd. (b)(1); 4 Miller & Starr, Cal. Real Estate (3d ed. 2000) § 10:182, pp. 559-560 (rev. 11/2003).) One of the purposes for the statements required in the notice of default "'is to afford the debtor an opportunity to cure

the default and obtain reinstatement of the obligation within three months … as provided in section 2924c of the Civil Code.'" (*Miller v. Cote, supra*, 127 Cal.App.3d at p. 894.) Thus the statute expressly requires, in subdivision (b)(1) of Civil Code section 2924c, that a notice of default "shall begin with the following statement," which includes a notice that "you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses" and that "[t]his amount is _____ as of ____(date)____."[2] In this case, the notice of default stated that "[t]his amount is $90,704.48 as of 3/11/04." But, as *Cameron III* subsequently established, this amount was erroneous.

We turn now to *Birkhofer*. In that case, the court found the plaintiff was "in part right" in his contention that "the particulars of the breach relied on were not correctly stated." (*Birkhofer, supra*, 27 Cal.App.2d at p. 522.) The notice of default described the breaches as two payments of interest ($1,067.50 each), and $2,500 (one half of a $5,000 principal payment). The claim to the $2,500 principal payment was not correct, because there had been an extension of time given for that payment. But the notice of default also *omitted* to state another $2,000 of principal that remained in default. (*Ibid.*) It was in this context that the court had to decide "whether or not the errors noted in the statements actually made in the notice are such as to be fatal to its validity," and concluded they were not. (*Id.* at p. 523.) The court first quoted *Williams v. Koenig*, *supra*, 219 Cal. at page 660, which stated that a notice of default need not literally follow the wording of the statute, but rather "a substantial compliance in accord with the spirit and purpose of the statute is sufficient."[3] (*Ibid.*; *Birkhofer*, at p. 523.) *Birkhofer* then stated its view that the

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[2] This provision of the statute did not exist when *Birkhofer* and *Williams v. Koenig* were decided.

[3] In *Williams v. Koenig*, the error asserted in the notice of default was that it recited that the terms of the deed of trust, rather than the terms of the note secured by the deed of trust, had been breached. The court found "[t]here is nothing in this contention," observing that the deed of trust in effect incorporated the obligation of the note, and "a

intent of the statute was sufficiently complied with if the notice of default contained a correct statement of breach sufficiently substantial to authorize the trustee to declare a breach. (*Birkhofer*, at pp. 523-524.) The court stated the breaches were "manifestly enough to authorize the proceeding," so that:

> "[T]he circumstance that erroneous statements may appear in the notice about other breaches, which *breaches, if they occurred, would only be cumulative so far as their effect was concerned, may properly be treated as immaterial*." (*Birkhofer, supra,* 27 Cal.App.2d at p. 524, italics added.)

Because there were two substantial breaches in payment of interest, in themselves enough to have authorized acceleration of the loan, "[i]n these circumstances we hold that the confusion in the notice with respect to the default in the principal was harmless." (*Ibid.*)

In this case, we agree that the Bank's evidence showed a breach – failure to pay the "escrow advances" for taxes – substantial enough to justify the trustee in declaring a default and proceeding with foreclosure. But here, unlike *Birkhofer*, or any other case of which we are aware, we cannot treat, either as "immaterial" or "harmless," the "erroneous statements… in the notice about other breaches" – namely, the claim for more than $85,000 in attorney fees. (*Birkhofer, supra*, 27 Cal.App.2d at p. 524.) Quite the contrary: while Cameron may have been able to cure a default of a few thousand dollars, the amount stated in the notice of default as necessary "to bring [her] account in good standing" was $90,705.48, most of which she did not owe (as this court subsequently found in *Cameron III*).

We do not believe that the notice of default in this case complied with the letter or the purpose of the statute, because the amount stated as necessary to redeem Cameron's property was enormously greater than the amount of Cameron's past due obligations, effectively eliminating any opportunity to cure her actual default and avoid the

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substantial compliance in accord with the spirit and purpose of the statute is sufficient." (*Williams v. Koenig*, *supra,* 219 Cal. at pp. 659-660.)

foreclosure.[4] Under these circumstances, the "erroneous statements . . . in the notice about other breaches" were neither "immaterial" nor "harmless." (*Birkhofer*, *supra*, 27 Cal.App.2d at p. 524.) Accordingly, the Bank did not present evidence, as was its burden on summary judgment, showing that Cameron could not establish the invalidity of the notice of default. Because the invalidity of the notice of default was the underpinning of all of appellants' causes of action, neither summary judgment nor summary adjudication of any of the causes of action was proper.[5] We do not mean to suggest that

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[4] We note that Cameron's opposition expressly contended that the Bank's summary judgment motion should be denied because of "failure to provide an accurate amount owing in default . . . ."

[5] Appellants' first cause of action asked for declaratory relief. We doubt that appellants can prevail on their declaratory relief claim. There is no present justiciable controversy for the court to resolve, for the appellants are only addressing past wrongs; the property has been sold to a third party. As we said in *Baldwin v. Marina City Properties, Inc.* (1978) 79 Cal.App.3d 393, 407, "'there is no basis for declaratory relief where only past wrongs are involved. Hence, where there is an accrued cause of action for an actual breach of contract or other wrongful act, declaratory relief may be denied. [Citations omitted.]' (3 Witkin, Cal. Procedure (2d ed. 1971) Pleading, § 722, pp. 2342-2343.)" In *California Ins. Guarantee Assn. v. Superior Court* (1991) 231 Cal.App.3d 1617, 1623-1624, we wrote: "'The declaratory relief statute should not be used for the purpose of anticipating and determining an issue which can be determined in the main action. The object of the statute is to afford a new form of relief where needed and not to furnish a litigant with a second cause of action for the determination of identical issues.' (*General of America Ins. Co. v. Lilly* (1968) 258 Cal.App.2d 465, 470 [citation].) 'Under section 1061 of the Code of Civil Procedure the court may refuse to exercise the power to grant declaratory relief where such relief is not necessary or proper at the time under all of the circumstances. The availability of another form of relief that is adequate will usually justify refusal to grant declaratory relief. The refusal to exercise the power is within the court's legal discretion and will not be disturbed on appeal except for abuse of discretion.'" (*Girard v. Miller* (1963) 214 Cal.App.2d 266, 277, citing *General of America Ins. Co. v. Lilly*, at p. 471; see also *State Farm etc. Ins. Co. v. Superior Court* (1956) 47 Cal.2d 428, 433.) Moreover, appellants' declaratory relief claims duplicates her other two causes of action. The remedy may be denied when another form of adequate relief is available. (*C.J.L. Construction Inc. v. Universal Plumbing* (1993) 18 Cal.App.4th 376, 390.) As for the second cause of action to set aside the foreclosure

Bank acted other than in a good faith belief that it could demand payment of its fees. But, as this court ruled in *Cameron III*, the Bank was not legally entitled to those fees. Because that is so, a notice of default premised on liability for those fees was necessarily defective.[6]

C. The trial court did not abuse its discretion with respect to the discovery motions

The appellants were served with all of the Bank's discovery documents; they admit that at page 30 of their opening brief. They claim that making discovery "was not possible given Appellants' time and material resources." In essence, they admit they were "too busy" with other aspects of this litigation. While this court recognizes that at this point the appellants were representing themselves and may have felt overwhelmed at having to respond to discovery at the same time that they had to oppose the Bank's summary judgment motion, they were not entitled to relief from the rules of procedure.

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sale, the trial court held no justiciable controversy exists because the property had been sold to a third party. It may well be that Cameron will be unable to set aside the sale, where the purchaser is a bona fide purchaser without notice of Cameron's claims. (Cf. Civ. Code, § 2924, subd. (c) ["[a] recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice"].) But no evidence to this effect appears in the Bank's summary judgment motion as to this cause of action. All we know is that "Quality sold the property to a third party purchaser."

[6] We note that appellants' claim that the sale should be set aside because they were not given notice of the continued sale date has no legal merit. Civil Code section 2924 contains the procedure for conducting a foreclosure sale. It provides that the only way to continue such a sale is to appear at the time and place noticed for the sale and orally proclaim the continued sale date. The statute requires no written notices or notices of any type beyond oral proclamation. The sale was continued by an oral proclamation. This was proper. (Civ. Code, § 2924g, subd. (a).)

Appellants had well established duties under the Discovery Act, and their self-represented status did not entitle them to special consideration. (*Rappleyea v. Campbell, supra; Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1055.) By totally neglecting their obligation to make discovery, they risked the imposition of monetary sanctions as well as an order deeming admitted each of the Bank's requests for admissions. The trial judge acted well within her discretion in applying the law.

Appellants claim that the Bank failed to resolve the discovery issues by meeting and conferring with them. The Bank was under no obligation to do so. No meet and confer requirement exists where, as here, the appellants have ignored their discovery obligations by providing no responses at all. (Code Civ. Proc., § 2030.290.) The case on which appellants rely, *Volkswagenwerk Aktiengesellschaft v. Superior Court* (1981) 122 Cal.App.3d 326, 330, mandates a meet and confer session in connection with "a motion to compel *further* answers" (italics added) brought under former Code of Civil Procedure section 2034, subdivision (a) (now Code of Civil Procedure section 2034.300, subdivision (a)). In other words, a meet and confer requirement exists when a respondent has complied, albeit partially, with the obligation to make discovery by responding.

Appellants next claim that the discovery was "premature" and "inappropriate" because they planned to amend their complaint. Nothing in the Discovery Act automatically stays discovery when a party plans to amend a pleading, or even files a motion to so amend. The appellants' obligation to respond to discovery requests by answer, objection, or production of writings continues unless excused by a protective order. (*Coriell v. Superior Court* (1974) 39 Cal.App.3d 487, 492.) Appellants never moved for a protective order.

Code of Civil Procedure sections 2030.290 and 2031.300 provide that when parties to whom interrogatories and inspection demands are directed fail to serve a timely response to them, the party to whom the discoveries are directed waives any objection to the demand. Moreover, the party making serving the interrogatories and the demand may move for an order compelling responses to the discovery. The court properly imposed a

monetary sanction pursuant to Code of Civil Procedure section 2023.030, subdivision (a) because by failing to respond to authorized methods of discovery and by opposing the Bank's discovery motions, appellants engaged in misuses of the discovery process pursuant to Code of Civil Procedure section 2023.010, subdivisions (d) and (h).

As for the admissions, the court properly deemed admitted the matters set out in the requests for admissions. Each of the requests was relevant to the subject matter of the litigation and calculated to lead to the discovery of admissible evidence. (*West Pico Furniture Co. v. Superior* Court (1961) 56 Cal.2d 407.) Code of Civil Procedure section 2033.280, subdivision (b) provides that the requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted when a party to whom requests are directed fails to serve a timely response. The appellants failed to respond within the requisite 30 days. (Code Civ. Proc., § 2033.250.) No proposed response was served before the hearing on respondent's motion. The relief granted by the trial court was proper under Code of Civil Procedure section 2033.280, subdivisions (b) and (c).

Appellants rely on *Reedy v. Bussell* (2007) 148 Cal.App.4th 1272. The case does not help them. There, as here, appellants stated, in effect, that they were "simply too busy to comply with [their] discovery obligations . . . ." (*Id*. at p. 1277.) Instead of criticizing the exasperated trial judge's imposition of sanctions, the court said, "We find no abuse of the court's discretion. Indeed, we marvel at its forbearance." (*Id.* at p. 1293.)

In this case, the trial court did not abuse its discretion with respect to any of the discovery orders that it made.

D. The trial court committed no error with respect to the cross-complaint in interpleader

Appellants filed no responsive pleadings to the complaint in interpleader. This resulted in their default followed by a default judgment which – this court stresses – appellants never moved to set aside. Code of Civil Procedure section 386, subdivision (d), which appellants apparently rely on now, does not suggest that defendants named in

an interpleader action need not file an answer. It says that they "may, in lieu of or in addition to any other pleading, file an answer to the complaint or cross-complaint . . . ." It follows that by failing to do so, appellants have waived a number of their arguments and defenses (Code Civ. Proc., § 430.80, subd. (a); see 4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 249), and every material allegation of the cross-complaint is taken as true. (Code Civ. Proc., § 431.20, subd. (a); see 5 Witkin, *supra*, § 1050.) They now are barred from raising claims and defenses that they never made or argued below, and the court acted properly in refusing to allow them to participate in the trial/prove-up hearing.

Appellants argue that the trial abused its discretion by (1) excluding them from the interpleader trial and (2) failing to comply with procedural requirements regarding the attorney fee award. Even if abuse of discretion constituted the correct standard of review, which it does not, we have examined the record and conclude that the trial judge acted well within her discretion. With respect to the first argument, the record reflects that the trial judge explained to Cameron that she had no standing by virtue of the default. The court then allowed Cameron to assert certain objections, which she did, and then Cameron voluntarily left the courtroom. With respect to the second argument, Code of Civil Procedure section 386.6 provides that when the interpleading plaintiff (Quality) is discharged and dismissed from the action, the court may award him costs and attorney fees from the fund on deposit, and at the time of final judgment may "make such further provision for assumption of such costs and attorney fees by one or more of the adverse claimants as may appear proper." (See also *Great-West Life Assur. Co. v. Superior Court* (1969) 271 Cal.App.2d 124, 128.) As for the award of attorney fees to the Estate of Robert Wilson, Code of Civil Procedure section 1032 allows a prevailing party to recover attorney fees as costs when authorized by contract, statute, or law. (See also Code Civ. Proc., § 1033.5, subd. (a)(10).) The Estate was entitled to its attorney fees under the provisions of its note and deed of trust (Civ. Code, § 1717), and Beneficial California Inc. f/k/a/ Transamerica Financial Services Inc. was entitled to its costs. (Code Civ. Proc., §

1032, subd. (b).) There was no error with respect to the cross-complaint and the relief granted by the trial court.

DISPOSITION

The judgment in favor of the Bank is reversed and the trial court's discovery orders are affirmed. The cause is remanded to the trial court with direction to vacate its order granting the Bank's motion for summary judgment and to enter a new order denying the motion. The judgment on the cross-complaint in interpleader is affirmed. The appellants are entitled to their costs for the appeal from the judgment in favor of the Bank, and respondents Beneficial California, Inc., Water and Power Community Credit Union, and the Estate of Robert Wilson are entitled to recover their costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOHR, J.*

We concur:

FLIER, Acting P. J.

BIGELOW, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.